

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KELLY J. MCGEEVER,

Plaintiff,

-v-

3:05-CV-1363 (LEK/ GJD)

JOANNE B. BARNHART, Commissioner,
Social Security Administration,

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on December 17, 2008, by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(d) of the Northern District of New York. Report-Rec. (Dkt. No. 19).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Judge DiBianco's Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

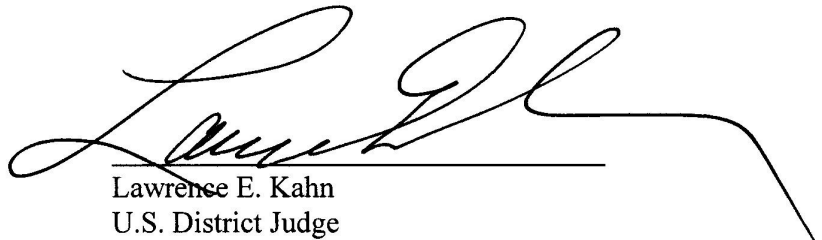
ORDERED, that the Report-Recommendation (Dkt. No. 19) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that the Commissioner's decision is **REVERSED** and the matter is **REMANDED** to the Commissioner, pursuant to sentence four of 42 U.S.C. § 405(g),¹ for further proceedings consistent with the Report-Recommendation; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: January 09, 2009
Albany, New York



Lawrence E. Kahn
U.S. District Judge

¹ Sentence four reads “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g).